IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 14904 of 2004(Y)

OS.187/2002 of M.C.,PARAPPANANGADI

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PETITIONER:

NARAYANIKUTTY, D/O.AREZHI GOURI AMMA,
VALLIKKUNNU AMSOM DESOM, TIRURANGADI TALUK.

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER

RESPONDENTS:

KAVASSERI HARIDASAN, S/O.APPU,
VALLIKKUNNU AMSOM DESOM, TIRURANGADI TALUK.

BY ADV. SRI.P.CHANDRASEKHAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) No. 14904 of 2004 **APPENDIX**

PETITIONER'S EXHIBITS

Ext.P1: True copy of order dated 17-3-2004 in I.A. No.189/2004 in O.S. No. 187/2002 issued by the Munsiff's Court Parappanangadi

//True copy//

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PIUS.C.KURIAKOSE. J.

W.P.(C) No. 14904 of 2004

Dated this the 25th day of May 2007

JUDGMENT

The plaintiff in a suit for declaration of easement right and for consequential injunction is aggrieved by the order dismissing the application for amendment of plaint. Having regard to the judicial precedents which govern the court's powers to grant amendment under Order 6 Rule 17, the learned Munsiff in my opinion was not justified in dismissing the application. I do not think that any legal prejudice or injustice will be occasioned to the respondent/ defendant by granting amendment which apparently became necessitated on account of the facts revealed from a commission inspection during the course of the suit. Mr. P.Chandrasekhar counsel for the respondent/ defendant submits that the amendment will enable the plaintiff to get away from certain fatal admissions which he had made in the original plaint.

2. Notwithstanding Mr. P.Chandrasekhar's submissions I am of the view that the learned Munsiff should have allowed the application putting the petitioner to terms. I allow the application. I set aside the impugned order and allow the I.A. No.189 of 2004 on condition that the petitioner pays a sum of Rs. 1000 to the respondent through his counsel in this Court within one week from today . If the payment is not made as

above the W.P.(C) will stand dismissed

3. It is made clear that if the plaintiff had made any fatal admissions which cannot be explained away by him, it is open to the respondent/ defendant to take advantage of those admissions at trial. The learned Munsiff will make every endeavour to dispose of the suit at the earliest by specially listing the same after permitting additional pleadings and after completing all pre- trial steps.

PIUS.C.KURIAKOSE,JUDGE

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